

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Children's Television Obligations	)	MM Docket No. 00-167
Of Digital Television Broadcasters	)	
	)	
	)	

**TURNER BROADCASTING SYSTEM, INC.'S  
REPLY TO OPPOSITION TO PETITION FOR  
RECONSIDERATION OF THE CHILDREN'S  
MEDIA POLICY COALITION**

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To: The Commission

**REPLY TO OPPOSITION TO PETITION FOR  
RECONSIDERATION OF THE CHILDREN'S  
MEDIA POLICY COALITION**

In its Petition for Reconsideration, Turner Broadcasting System, Inc. ("Turner"), requested that the Commission reconsider: (1) its expansion of the definition of "commercial matter," particularly as it applies to networks whose schedule is primarily comprised of children's television programming, and (2) its new website regulations, including those relating to the display of website addresses during children's programming on non-interactive television platforms and the absolute prohibition of host-selling.<sup>1</sup> Other affected parties have filed petitions for reconsideration on those points as well.<sup>2</sup> Turner submits this reply in response to the opposition to these petitions filed by

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<sup>1</sup> Turner Broadcasting System, Inc.'s Petition For Reconsideration (Feb. 2, 2005) ("Turner Petition").

<sup>2</sup> See Petition For Reconsideration of The WB Television Network (Feb. 2, 2005); Petition For Reconsideration of Nickelodeon (Feb. 2, 2005); Petition For Reconsideration of The Walt Disney Company (Feb. 2, 2005); The National Cable & Telecommunications Association's Petition For Reconsideration (Feb. 2, 2005); Discovery Communications, Inc.'s Petition For Reconsideration (Feb. 2, 2005); Petition For Reconsideration of Fox Entertainment Group, Inc. (Feb. 2, 2005); American Advertising Federation, et al. Petition For Reconsideration (Feb. 2, 2005); The National Association of Broadcasters Petition For Reconsideration and Request For Clarification (Feb. 2, 2005).

the Children's Media Policy Coalition ("CMPC").<sup>3</sup> The CMPC filing provides no basis for denying Turner's petition for reconsideration.

**I. THE COMMISSION SHOULD RESTORE ITS PREVIOUS DEFINITION OF COMMERCIAL MATTER**

In its Petition for Reconsideration, Turner urged the Commission to restore its previous definition of commercial matter, which did not count as commercial the promotion of programming airing on the same broadcast station or program network. Turner indicated that the Commission's definitional change failed to serve the statutory mandate, the requirements of administrative and constitutional law, and would result in significant harm to Cartoon Network and other networks that primarily feature children's programming.<sup>4</sup>

CMPC's Opposition continues the line of argument its members have advocated throughout this proceeding. According to CMPC, since promotional announcements of a future program count as commercial matter when consideration is received, and since promotional announcements by a broadcast station for a sister station's program should count as commercial, the same logic should hold for a station that "airs promotions for its own programs, [for] it is clearly receiving consideration in the form on increased audiences."<sup>5</sup>

There are multiple flaws with that line of argument. Taken to its logical conclusion, it would suggest that programs themselves must be considered "commercial" because they affect viewership and consequent advertising revenues. More importantly,

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<sup>3</sup> Opposition to Petitions for Reconsideration of the Children's Media Policy Coalition (Mar. 23, 2005) ("CMPC Opp.").

<sup>4</sup> Turner Petition at 6-13.

<sup>5</sup> CMPC Opp. at 14.

this argument subverts Congressional intent<sup>6</sup> and reverses decades of Commission action on this question. When implementing the Children’s Television Act (“CTA”), the Commission excluded promotional announcements for which no charge was made. In doing so, it cited the Commission’s 1976 ruling on the then-applicable logging requirement for commercial matter, which determined that announcements promoting sister stations were commercial, but specifically found the contrary to be true with respect to promotions for programming on the same station or network.<sup>7</sup> CMPC’s claim that the Commission’s change in definition comports with Congress’ directive is simply wrong.

Further, CMPC’s suggestion that Turner and other networks “effectively concede” the receipt of consideration in connection with promotions for their own programming by arguing that the change in the definition will adversely affect their revenues misses the point.<sup>8</sup> If a network receives no revenue for such a promotion and is forced, by virtue of the definition change, to count the promotion as commercial time and forego selling a different commercial slot, its revenues are adversely affected.<sup>9</sup> CMPC also implies that, since cable networks receive revenues from both advertising and

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<sup>6</sup> H.R. Rep. No. 385, 101st Cong., 1st Sess. 15-16 (1989); S. Rep. No. 227, 101st Cong., 1st Sess. 21 (1989).

<sup>7</sup> See *Report and Order, Policies and Rulings Concerning Children’s Television Programming*, 6 FCC Rcd. 2111, 2112 (1991); *In the Matter of Amendment of Note 3 of Section 73.112, 73.282 and 73.870 of the Commission’s Rules Concerning the Logging of Promotional Announcements*, 59 FCC 2d 494 (rel. May 25, 1976).

<sup>8</sup> CMPC Opp. at 14-15.

<sup>9</sup> CMPC further attempts to find support for its position through its observation that a banner on the Cartoon Network website for a free online game promoting its new Batman show is labeled as “advertising.” CMPC Opp. at 15 n.61. CMPC’s reliance on this website banner is misplaced. All banners on the Cartoon Network website, regardless of their content, carry the “advertisement” label due to a technical limitation in which the website servers are unable to distinguish among advertising, public service announcements, promotions or other content.

subscriptions, any harm on advertising could be offset by an increase in subscription fees.<sup>10</sup> The resulting negative impact on consumers is evident.

Much of CMPC's argument focuses on its desire to maximize the amount of program material during E/I programming aired by broadcasters. To this end, CMPC suggests that in lieu of airing promotions during children's programming, networks should increase the length of their program material and instead promote children's programming during adult-oriented programming that children might watch.<sup>11</sup> This suggestion is of little utility to Cartoon Network, which, except for its late night Adult Swim block, airs only children's programming.

Turner's Petition contended that the Commission's decision failed to meet the requirements of administrative law, raised serious First Amendment concerns, and is particularly harmful to networks like the Cartoon Network that primarily feature children's programming. The CMPC Opposition provides nothing to remedy these fatal flaws. The Commission should restore its previous definition of commercial matter.

## **II. THE COMMISSION SHOULD RECONSIDER ITS WEBSITE REGULATIONS**

In its Petition, Turner indicated that it hoped to work with other interested parties, advocacy groups, and the Commission staff to develop more workable regulations regarding websites that are referenced during children's programming. Turner continues to work toward that objective. Turner nonetheless expressed in its Petition its belief that the Commission should reconsider its website regulations. Turner argued that the Commission failed to provide notice or compile a record regarding the display of website

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<sup>10</sup> CMPC Opp. at 20 n.85.

<sup>11</sup> *Id.* at 20.

addresses on non-interactive television platforms. Moreover, its four-prong website standard and ban on host-selling raise numerous practical and interpretive questions.<sup>12</sup>

The CMPC's response does not cure these problems. Whatever the extent of the Commission's authority to regulate references to websites in children's programming, its focus in this proceeding has undeniably been on interactive television platforms. As Turner noted in its Petition, the NPRM and underlying record in this proceeding were so fundamentally focused on interactivity, the Commission's rules on the display of website addresses rather than interactive television are necessarily vulnerable as a matter of administrative law.<sup>13</sup> In addition, CMPC offers no solution to the numerous practical problems, raised by Turner and others, implicated by the website regulations. CMPC's response is to simply address them on a case-by-case basis.<sup>14</sup> From both a practical and legal perspective, this approach is infeasible and all parties would be best served by the Commission addressing and resolving them now.

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<sup>12</sup> Turner Petition at 14-21.

<sup>13</sup> *Id.* at 17-19.

<sup>14</sup> CMPC Opp. at 24.

CONCLUSION

Turner's Petition for Reconsideration should be granted.

Respectfully submitted,



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